

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Complaint by Qwest  
Communications Company, LLC against  
Tekstar Communications, Inc. regarding  
Traffic Pumping

**FIRST PREHEARING ORDER**

This matter came on for a prehearing conference before Administrative Law Judge Steve M. Mihalchick on March 1, 2010, in the Public Utilities Commission's small hearing room in St. Paul.

Appearances:

Jason D. Topp, Counsel, Qwest Communications Company, LLC, appeared for Qwest Communications Company, LLC (QCC).

Thomas Erik Bailey and Philip R. Schenkenberg, Briggs and Morgan, and Bret Lawson, Attorney, Sprint Communications Company L.P., appeared for Sprint Communications Company L.P. (Sprint).

Dan Lipschultz, Moss & Barnett, appeared for Tekstar Communications, Inc. (Tekstar).

Valerie M. Means, Assistant Attorney General, appeared on behalf of the Department of Commerce, Office of Energy Security (Department or OES).

Kevin O'Grady, Analyst, appeared for the staff of the Public Utilities Commission (Commission or MPUC).

Based on the discussions during the prehearing conference, and all of the files and proceedings, the Administrative Law Judge makes the following:

**ORDER**

**Parties**

1. The parties to this matter at this time are QCC, Sprint, Tekstar, and OES. There are no pending motions to intervene.

2. Persons wishing to intervene must file a written petition to intervene, pursuant to Minn. R. 1400.6200, subp. 1, by December 1, 2010. The petition shall be served upon the Administrative Law Judge, all existing parties, and the Minnesota Public Utilities Commission. Any objection to a petition to intervene shall be filed within seven days of service of the petition. Any persons petitioning to intervene after December 1, 2010, may be restricted as to the scope of their participation. Any person who is allowed to intervene after the date of this Order shall be bound by the terms of this Order.

3. Members of the public need not become formal parties to participate in the hearing. Members of the public may offer evidence, attend the hearing, file written comments, and request the opportunity for oral argument. But any person desiring to become a formal party must file a petition to intervene as described above.

### **Schedule**

4. The following schedule is adopted:

QCC and Sprint Direct	October 1, 2010
Deadline for Intervention	December 1, 2010
Other Intervenors Direct	January 3, 2011
Tekstar Response	February 1, 2011
Department Direct	March 8, 2011
All Parties Rebuttal	April 5, 2011
All Parties Surrebuttal	April 26, 2011
Final Discovery Served	May 6, 2011
Evidentiary Hearing, 9:30 a.m. in the Commission Offices	June 6 – 10, 2011

5. Briefing deadlines and a date for the Report and Recommendation will be set at the conclusion of the hearing.

### **Procedure**

6. The Rules of the Office of Administrative Hearings govern the conduct of the hearings; the Professionalism Aspirations adopted by the Minnesota Supreme Court will be observed.

### **Filing of Documents (Excluding Information Requests and Responses)**

7. Original documents shall be eFiled using the Commission's eDocket system in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's

standards. In any instance where the eDocket system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

8. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

9. All documents that are filed shall be served in accordance with the OAH contested case service list for this docket on the eDocket system. The service list will be revised as necessary by the Office of Administrative Hearings.

10. Hard copies of Trade Secret and other Nonpublic Data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A or B to the Protective Agreement and Order of March 9, 2010, as appropriate. Such documents may be served on the next business day following the filing of the public version. Trade Secret and other Nonpublic Data shall not be transmitted by email except by agreement of the affected parties.

11. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

12. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with Minnesota law, including the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available at [http://www.puc.state.mn.us/portal/groups/public/documents/pdf\\_files/000671.pdf](http://www.puc.state.mn.us/portal/groups/public/documents/pdf_files/000671.pdf).

## **Discovery**

13. A party may serve requests for information on any other party. All requests for information shall be made electronically, and unless the parties agree otherwise, shall be followed with a hard copy sent by regular U.S. mail to the person from whom the information is sought, with a copy of the request mailed to all parties of record. **Information Requests shall NOT be eFiled.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, a party shall send the request by hard copy only. Requests shall be sent to the person designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a state holiday is considered received on the next business day.

14. The party responding to the information request shall provide the information requested to all parties within ten business days after receipt of the request, unless the requesting party agrees to provide additional time. A business day does not include weekend days and state holidays. In accordance with Minn. R. 1400.6100,

subp. 1, the day that the information request is received is not counted in the eight-day period.

15. Responses to information requests shall be made electronically, and unless the parties agree otherwise, shall be followed with a hard copy of the response sent by regular U.S. mail or other delivery service. **Information Request Responses shall NOT be eFiled.** To the extent that a response includes material designated as Trade Secret or Nonpublic, the responding party shall send the response by hard copy only, unless otherwise agreed by the affected parties, but should ensure delivery by the due date. Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

16. In the event that due to the volume or nature of information included in a response, the responding party is unable to send the response by e-mail, the responding party shall send the response by facsimile, regular U.S. mail, or other delivery service, so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the due date. Responding parties may utilize CDs or other agreed-to electronic formats to convey large volumes of data. There shall be a continuing obligation to update and supplement information responses.

17. In the event the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

18. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Notice of such a motion should be brought informally by email. Such motions may be brought informally by email. Notice of such motions will be made by email. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

19. Information requests directed to QCC should be directed to Dianne.Barthel@qwest.com.

### **Prefiled Testimony**

20. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

21. All testimony other than cross-examination shall be prefiled. Prefiled testimony shall be marked and offered with exhibit numbers. Prefiled testimony that is amended, or not offered into the record, shall be considered withdrawn and the sponsoring witness may not be cross-examined concerning the withdrawn testimony. Except for good cause shown, all substantive revisions or corrections to any prefiled testimony shall be served upon the Administrative Law Judge and the parties by email no later than three days before the evidentiary hearing starts.

22. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal or surrebuttal testimony and exhibits.

### **Examination of Witnesses**

23. Unless the parties agree otherwise, the order of testimony and questioning in the evidentiary hearing shall be: QCC, Sprint, remaining intervenors, Tekstar, and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

24. In the event that a witness must be scheduled for a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

25. Witnesses shall be allowed ten minutes to summarize their prefiled testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in prefiled testimony

26. Parties shall examine and cross-examine witnesses through their attorneys, if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

27. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge no later than two weeks prior to commencement of the evidentiary hearing. Objections to surrebuttal testimony shall be filed and served no later than two business days prior to commencement of the evidentiary hearing.

Dated: March 9th, 2010

/s/ Steve M. Mihalchick

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STEVE M. MIHALCHICK  
Administrative Law Judge